

**CHAPTER NO. 390**

**SENATE BILL NO. 2321**

**By Kyle, McLeary**

**Substituted for: House Bill No. 2337**

**By McMillan, Hackworth**

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 6, Parts 1, 2, 4 and 5, relative to workers' compensation, and Tennessee Code Annotated, Section 50-9-105(a)(7), relative to the Drug Free Workplace.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-110(c)(1), is amended by deleting the language "ten hundredths of one percent (.10%)" and substituting instead the language "eight hundredths of one percent (.08%)" after the words "greater than" and before the words "by weight" in the first sentence of the subsection.

SECTION 2. Tennessee Code Annotated, Section 50-6-118, is amended by adding the following new language as a new subsection (c):

(c) The commissioner, commissioner's designee, or an agency member appointed by the commissioner, may assess the penalties authorized by this chapter upon providing to an employer, an employee, an insurer, and/or a self-insured pool or trust notice and an opportunity for a hearing. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner, shall have authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of a penalty(s) authorized by this chapter. When a hearing or review of an agency decision is requested, the requesting party shall have the burden of proving by a preponderance of the evidence that the penalized party was either not subject to the Workers' Compensation Law (Title 50, Chapter 6) or that the penalty(s) assessed pursuant to this chapter should not have been assessed.

SECTION 3. Tennessee Code Annotated, Section 50-6-121(a)(1)(C), is amended by deleting the language "and the successors shall serve a four-year term to begin on July 1, 2005" in the second grammatical sentence and by substituting instead the language "and the successors shall serve a four-year term to begin on July 1, 2006".

SECTION 4. Tennessee Code Annotated, Section 50-6-129, is deleted in its entirety and repealed.

SECTION 5. Tennessee Code Annotated, Section 50-6-203(b)(1), is amended by deleting the word "voluntarily".

SECTION 6. Tennessee Code Annotated, Section 50-6-203(c), is amended by deleting the word "voluntary".

SECTION 7. Tennessee Code Annotated, Section 50-6-208, is amended by adding the following new language as a new subsection (h):

(h) In order to require the Second Injury Fund to participate in the benefit review conference, a party shall serve notice of potential liability on the Fund.

SECTION 8. Tennessee Code Annotated, Section 50-6-236(i), is amended by deleting the language "as part of a benefit review conference," after the word "discovery" and before the language "workers"; and is further amended by adding the language ", either on their own or" after the language "shall have the authority" and before the language "at the request of either party".

SECTION 9. Tennessee Code Annotated, Section 50-6-405(b)(1)(G)(ii), is amended by deleting the existing language in its entirety and substituting instead the following language:

If the self-insured employer and depository institution fail to comply with subdivision (b)(1)(G)(i) of this section, the certificate of deposit shall be automatically renewed.

SECTION 10. Tennessee Code Annotated, Section 50-6-405(b)(2), is amended by deleting the language "sixty (60) days after the company's immediately preceding fiscal year" and substituting instead the language "the last day of the sixth month after the end of the employer's immediately preceding fiscal year".

SECTION 11. Tennessee Code Annotated, Section 50-6-405(b)(7), is amended by deleting from the second sentence the language "chapter 1, part 4 of this title" and substituting instead the language "Tennessee Code Annotated, Title 56, Chapter 1, Part 4".

SECTION 12. Tennessee Code Annotated, Section 50-6-405(c), is amended by adding the following language as a new, appropriately designated subdivision:

All groups pooling their liabilities pursuant to this subsection shall pay premium tax and surcharges at the rates set forth in § 56-4-206. Each group's premium tax and surcharge payments shall be due on or before the last day of the sixth month following the end of the group's fiscal year. Any group failing to timely pay such taxes and surcharges shall be subject to the penalties and sanctions set forth in § 56-4-216.

SECTION 13. Tennessee Code Annotated, Section 50-6-501(a), is amended by deleting the language "in the top twenty-five percent (25%) of all covered employers' modification factors (or rates) applied to the premium" and substituting instead the language "greater than or equal to one and twenty hundredths (1.20)".

SECTION 14. Tennessee Code Annotated, Section 50-6-418, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection:

(b) The department of commerce and insurance shall apply the drug-free workplace program credit separately to each individual company for an employer having

more than one company under one workers' compensation insurance policy. However, no credit given to an individual company may be combined with any credit given to any other company of the common employer or to the common employer itself.

SECTION 15. Tennessee Code Annotated, Section 50-6-208(b)(1)(D), is amended by deleting the phrase "June 30, 2005" and substituting instead the phrase "June 30, 2006" and by deleting the phrase "July 1, 2005" and substituting instead the phrase "July 1, 2006", so that as amended, Tennessee Code Annotated, Section 50-6-208(b)(1)(D), shall read as follows:

The provisions of this subdivision (b)(1) shall apply only to injuries that arise on or before June 30, 2006, and shall have no applicability to injuries that arise on or after July 1, 2006.


SECTION 16. Public Acts 2004, chapter No. 962, section 25, amending Tennessee Code Annotated, Section 50-6-208(b)(2)(A), as of July 1, 2005, shall be amended by deleting the phrase "June 30, 2005" and substituting instead the phrase "June 30, 2006" and by deleting the phrase "July 1, 2005" and substituting instead the phrase "July 1, 2006", so that as amended, the amendment to Tennessee Code Annotated, Section 50-6-208(b)(2)(A), shall read as follows:

The provisions of this subpart (b)(2)A shall apply only to injuries that arise on or before June 30, 2006, and shall have no applicability to injuries that arise on or after July 1, 2006.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 25, 2005**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 9<sup>th</sup> day of June 2005**

  
PHIL BREDESEN, GOVERNOR